In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 861

SWORD LINE, INC., PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The court below decided correctly, we submit, that the United States district courts have exclusive jurisdiction under the Suits in Admiralty Act of all maritime causes of action for overpayment of charter hire for the use of government vessels, although the claim is founded upon acts of Congress, and that such causes of action do not accrue subsequent to the redelivery of the vessels but arise at the time the statutes are violated. Nonetheless, we do not oppose the granting of the writ, because of the decision of the Court of Claims in *Smith Johnson S. S. Corp.* v. *United*

States, No. 98–55, decided March 6, 1956, a decision which that court stated to be in conflict with the decision below in respect of Suits in Admiralty Act jurisdiction (Pet. 41–47). Moreover, the entire question, including the matter of when the cause of action arises, is of great importance and will affect a large number of cases now pending not only in the Court of Claims but in the district courts of the First, Second, Third, Fifth and Ninth Circuits.

The scope of quasi-contractual jurisdiction in admiralty appears in recent years to have given rise to extensive difficulties and misunderstandings. See *Archawski* v. *Hanioti,* No. 351, October Term, 1955, decided April 9, 1956. Prior to the decision of the Second Circuit in that case (223 F. 2d 406), a large number of Suits in Admiralty Act libels, substantially identical with that of petitioner here, had been filed in the local admiralty courts in Massachusetts, New York, Delaware, the District of Columbia, Virginia, Louisiana, California, Oregon and Washington. Following the Second Circuit decision in *Archawski,* however, forty-five Tucker Act suits, many of them duplicates of suits already pending in the district courts, were filed in the Court of Claims. It is probable that there will eventually be involved suits against the United States by a total of some 90 to 95 charterers for well over $40,000,000.

Although many of the Suits in Admiralty Act libels filed elsewhere have been transferred to New York under Section 2 of the Suits in Admiralty Act, 28 U. S. C. 742, many other cases remain pending in admiralty courts within the First, Second, Third, Fifth and Ninth Circuits. Special difficulties arise from the many cases of duplicate filings in the admiralty courts and the Court of Claims. Because of these duplicate filings, many of the Court of Claims suits may well have to be dismissed under 28 U. S. C. 1500 even if it be eventually concluded that there is no Suits in Admiralty Act jurisdiction. *Calmar S. S. Corp. v. United States,* 345 U. S. 446, 455, n. 7. Thus, the present conflict peculiarly needs early resolution.

While we believe that the result reached by the court below is correct, the conflict with the decision in the Court of Claims and the importance of the question are such as to render appropriate review by this Court. For these reasons, we do not oppose but rather urge the granting of the writ of certiorari in this case.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

APRIL 1956.

U. S. GOVERNMENT PRINTING OFFICE : 1956